

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IMPLICIT, LLC,

Plaintiff,

V.

NETSCOUT SYSTEMS, INC.,

SANDVINE CORPORATION

Defendants.

**CIVIL ACTION NO. 2:18-CV-00053-JRG
(LEAD)**

**CIVIL ACTION NO. 2:18-CV-00054-JRG
(MEMBER)**

**MINUTES FOR PRETRIAL CONFERENCE
HELD BEFORE U. S. DISTRICT JUDGE RODNEY GILSTRAP
November 13, 2019**

OPEN: 9:07 a.m.

ADJOURN: 2:20 p.m.

ATTORNEYS FOR PLAINTIFF:	See attached.
ATTORNEYS FOR DEFENDANTS:	See attached.
LAW CLERKS:	Taylor Fitzner Christian Chessman
COURT REPORTER:	Shelly Holmes, CSR-TCRR
COURTROOM DEPUTY:	Jan Lockhart

<u>TIME</u>	<u>MINUTES</u>
9:07 a.m.	Court opened. Mr. Davis and Ms. Smith introduced co-counsel. Counsel announced ready for hearing.

<u>TIME</u>	<u>MINUTES</u>
	<p>The Court gave the parties instructions for Jury Selection and Trial. Jury Selection will be held on either Monday December 9, 2019 or Monday, December 16, 2019. A written Order will follow concerning trial scheduling. Opening statements and evidence are scheduled to begin after Jury Selection. The Court and staff are in chambers each morning at 7:30 a.m. The trial will start each day at 8:30 a.m. Exhibits used the prior day will be read into the record prior to the jurors returning to the courtroom (usually around 8:15 a.m.). The Court allotted 11 hours per side to try the case (this time does not include the time for voir dire, opening statements and closing arguments); 30 minutes a side for voir dire (of this time, a 3-minute, high level, overview of the case may be given); 30 minutes for opening statements and 40 minutes a side for closing arguments; 8-member jury to be selected (four strikes per side); procedures for disputes discussed. Court to be notified by 10:00 p.m. each night of disputes re demonstratives to be used the next day, or that there are no disputes. Binders with disputed information are to be prepared and submitted to the Court at 7:00 a.m. the following day. Deposition disputes are to be given to the Court the day before they are going to be used. Rule 50(a) motions will be heard after ALL evidence is concluded. The informal charge conference will be held in chambers after Rule 50(a) motions are heard. A formal charge conference will follow afterward. The Court discussed policies and the Standing Order regarding the sealing of the courtroom. Juror questionnaires and the manner of use thereof were discussed, i.e., copies of the Juror Questionnaire may be obtained from the Deputy-in-Charge, Kecia Clendening. Juror notebooks are to be prepared by counsel and delivered to the Court by 3:00 p.m. on December 5, 2019. Each notebook should include the Patents-in-Suit, the Court's claim construction chart, tabbed witness pages (each witness page should contain a head and shoulders photograph of the witness followed by ruled lines on the remainder of the page), a 3-hole punched legal pad and a non-clicking pen. The Court also gave guidance regarding expert witness testimony. Exhibits will be pre-admitted. Only exhibits used during the trial will be considered as part of record. Witness lists are to be revised and filed by the parties within 24 hours as to May Call Witnesses and Will Call Witnesses. The Court set aside November 26, 2019 at 9:00 a.m. for an additional pretrial, if needed.</p>
	<p>The Court heard argument on the Sealed Patent Motion to Exclude Dr. Keith Ugone's Reasonable Royalty Calculation and Opinions Regarding Damages filed by Netscout Systems, Inc. and Sandvine Corporation (Dkt. No. 141). Mr. Kean argued for Defendants. Mr. Hosie argued for Plaintiff. The Court ruled on the motion for the reasons and in the manner set forth at the hearing and granted leave to Plaintiff to supplement Dr. Ugone's report.</p>
9:53 a.m.	<p>The Court heard argument on Defendants' Motion for Summary Judgment of Non-Infringement (Dkt. No. 142). Mr. Buresh argued for Defendants. Mr. Hurt argued for Plaintiff. The Court DENIED the motion.</p>
10:30 a.m.	<p>The Court DENIED Defendants' Motion to Exclude Portions Dr. Kevin C. Almeroth's Opinions Regarding Infringement (Dkt. No. 143).</p>

TIME	MINUTES
10:45 a.m.	Court reconvened.
10:47 a.m.	Courtroom sealed. The Court heard argument on the Plaintiff's Daubert Motion to Exclude Portions of NetScout Systems, Inc. and Sandvine Corporation's Invalidity Expert Report and Testimony (Dkt. No. 144) and Plaintiff's Motion for Partial Summary Judgment (Dkt. No. 145). Mr. Martin argued for Plaintiff. Mr. Buresh argued for Defendants. The Court DENIED both motions. Courtroom unsealed at 11:02 a.m.
11:03 a.m.	The Joint Stipulation was noted by the Court pertaining to Dkt. Nos. 196 and 183. The Court adopted the agreement in the document and are to be considered rulings on Motions in Limine by the Court.
11:05 a.m.	The Court heard argument on the parties' Group 1 -- Prior Implicit Litigations, NetScout Litigation and PTO Proceedings. Category Plaintiff's Motions in Limine 3 and Defendants' Motion in Limine 11 Mr. Davis argued for Plaintiff. Mr. Buresh argued for Defendants. The Court GRANTED Defendants' Motion in Limine 11 for the reasons set forth at the hearing. The Court DENIED-AS-MOOT Plaintiff's Motion in Limine 3.
11:13 a.m.	The Court heard argument on the parties Group 2 -- Defendants' Prior Testimony -- Defendants' Motion in Limine 10. Mr. Buresh argued for Defendants. Mr. Davis argued for Plaintiff. The Court GRANTED the Motion in Limine for the limited purposes discussed at the hearing.
11:19 a.m.	The Court heard argument on the parties' Group 3 -- Back-Pay Dispute -- Plaintiff's motion in Limine No. 2. Mr. Hosie argued for Plaintiff. Mr. Kean argued for Defendant. The Court GRANTED the Motion in Limine.
11:23 a.m.	The Court heard argument on the parties' Group 4 -- Settlement licenses -- Defendants' Motions in Limine 3 and 4. Mr. Kean argued for Defendant. Mr. Hosie argued for Plaintiff. The Court DENIED Defendants' Motion in Limine 3. The Court DENIED Defendants' Motion in Limine 4.
11:27 a.m.	The Court heard argument on the parties' Group 5 -- Royalty Base -- Defendants' Motion in Limine 5. Mr. Kean argued for Defendants. Mr. Martin argued for Plaintiff. The Court DENIED the motion.
11:31 a.m.	Mr. Kean WITHDREW NetScout's Motion in Limine 12.
11:32 a.m.	The Court heard argument on Group 7 -- References to Prior Art -- Defendants' Common Motion in Limine 1 -- Mr. Buresh argued for Defendant. Mr. Martin argued for Plaintiff. The Court DENIED the Motion in Limine.
11:39 a.m.	The Court heard argument on Group 8 -- Reduction to Practice -- Defendants' Motion in Limine 2 -- Mr. Buresh argued for Defendants. Mr. Hosie argued for Plaintiff. The Court DENIED the Motion in Limine in all respects except as agreed by the parties.
11:47 a.m.	The Court heard argument on Group 9 -- Stealing & Pilfering -- Defendants' Motion in Limine 8 -- Mr. Buresh argued for Defendants. Mr. Hosie argued for Plaintiff. The Court GRANTED the Motion in Limine.
11:53 a.m.	Lunch recess. Parties to meet and confer regarding exhibits until 2:00 p.m.
2:19 p.m.	Court reconvened. Mr. Davis and Ms. Smith confirmed that all exhibit disputes had been resolved. The parties will file updated exhibit lists.
2:20 p.m.	Court adjourned.